

SENATE BILL NO. 125

INTRODUCED BY K. HANSEN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TERMINATION DATE FOR TEMPORARY CHANGES IN APPROPRIATION RIGHTS; EXTENDING THE TERMINATION DATE FOR TEMPORARY CHANGES IN APPROPRIATION RIGHT VALIDITY; EXTENDING THE TERMINATION DATE FOR THE UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM; EXTENDING THE TERMINATION DATE FOR THE UPPER CLARK FORK RIVER BASIN CHANGES IN APPROPRIATION RIGHT AND LEASE VALIDITY; CLARIFYING THE DEFINITION OF APPROPRIATE; AMENDING THE DEFINITION OF BENEFICIAL USE TO INCLUDE INSTREAM FLOW FOR THE PURPOSE OF MAINTAINING OR ENHANCING THE FISHERY RESOURCE; AMENDING SECTIONS 85-2-102, 85-2-338, 85-2-409, AND 85-2-440, MCA, SECTION 6, CHAPTER 322, LAWS OF 1995, SECTION 14, CHAPTER 487, LAWS OF 1995, SECTION 3, CHAPTER 433, LAWS OF 2001, AND SECTION 3, CHAPTER 122, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436;

or

(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439; or

(e) temporary changes to maintain or enhance instream flow to benefit the fishery resource in

1 accordance with 85-2-408.

2 (2) "Beneficial use", unless otherwise provided, means:

3 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not
4 limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal,
5 power, and recreational uses;

6 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141
7 and of water leased under a valid lease issued by the department under 85-2-141;

8 (c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under
9 85-2-436; ~~or~~

10 (d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper
11 Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under
12 85-2-439; or

13 (e) a use of water through a temporary change or lease for instream flow to benefit the fishery resource
14 in accordance with 85-2-408.

15 (3) "Certificate" means a certificate of water right issued by the department.

16 (4) "Change in appropriation right" means a change in the place of diversion, the place of use, the
17 purpose of use, or the place of storage.

18 (5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

19 (6) "Correct and complete" means that the information required to be submitted conforms to the
20 standard of substantial credible information and that all of the necessary parts of the form requiring the
21 information have been filled in with the required information.

22 (7) "Declaration" means the declaration of an existing right filed with the department under section 8,
23 Chapter 452, Laws of 1973.

24 (8) "Department" means the department of natural resources and conservation provided for in Title 2,
25 chapter 15, part 33.

26 (9) "Developed spring" means any artificial opening or excavation in the ground, however made,
27 including any physical alteration at the point of discharge regardless of whether it results in any increase in the
28 yield of ground water, from which ground water is sought or can be obtained or through which it flows under
29 natural pressures or is artificially withdrawn.

30 (10) "Existing right" or "existing water right" means a right to the use of water that would be protected

under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground

water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.
(Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; ~~or~~

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; or

(d) temporary changes to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; ~~and~~

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water through a temporary change or lease for instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8,

Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water for a beneficial use; or

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) temporary changes to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; ~~or~~

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water through a temporary change or lease for instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the

1 standard of substantial credible information and that all of the necessary parts of the form requiring the
2 information have been filled in with the required information.

3 (6) "Declaration" means the declaration of an existing right filed with the department under section 8,
4 Chapter 452, Laws of 1973.

5 (7) "Department" means the department of natural resources and conservation provided for in Title 2,
6 chapter 15, part 33.

7 (8) "Developed spring" means any artificial opening or excavation in the ground, however made,
8 including any physical alteration at the point of discharge regardless of whether it results in any increase in the
9 yield of ground water, from which ground water is sought or can be obtained or through which it flows under
10 natural pressures or is artificially withdrawn.

11 (9) "Existing right" or "existing water right" means a right to the use of water that would be protected
12 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water
13 rights created under federal law and water rights created under state law.

14 (10) "Ground water" means any water that is beneath the ground surface.

15 (11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of
16 abandonment under 85-2-226.

17 (12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through
18 85-2-303 and 85-2-306 through 85-2-314.

19 (13) "Person" means an individual, association, partnership, corporation, state agency, political
20 subdivision, the United States or any agency of the United States, or any other entity.

21 (14) "Political subdivision" means any county, incorporated city or town, public corporation, or district
22 created pursuant to state law or other public body of the state empowered to appropriate water. The term does
23 not mean a private corporation, association, or group.

24 (15) "Salvage" means to make water available for beneficial use from an existing valid appropriation
25 through application of water-saving methods.

26 (16) "State water reservation" means a water right created under state law after July 1, 1973, that
27 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water
28 throughout the year or at periods or for defined lengths of time.

29 (17) "Substantial credible information" means probable, believable facts sufficient to support a
30 reasonable legal theory upon which the department should proceed with the action requested by the person

1 providing the information.

2 (18) "Waste" means the unreasonable loss of water through the design or negligent operation of an
3 appropriation or water distribution facility or the application of water to anything but a beneficial use.

4 (19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner
5 of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

6 (20) "Water division" means a drainage basin as defined in 3-7-102.

7 (21) "Water judge" means a judge as provided for in Title 3, chapter 7.

8 (22) "Water master" means a master as provided for in Title 3, chapter 7.

9 (23) "Watercourse" means any naturally occurring stream or river from which water is diverted for
10 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

11 (24) "Well" means any artificial opening or excavation in the ground, however made, by which ground
12 water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."
13

14 **Section 2.** Section 85-2-338, MCA, is amended to read:

15 **"85-2-338. Upper Clark Fork River basin steering committee -- membership and duties --**
16 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
17 steering committee has 22 members, who must be appointed as follows:

18 (a) Each of the six conservation districts in the basin may appoint a member.

19 (b) Each of the six county commissions in the basin may appoint a member.

20 (c) The department director shall appoint the remaining 10 committee members and any additional
21 committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee
22 membership includes a balance of affected basin interests and is in conformance with subsection (2).

23 (2) Steering committee members must be selected on the basis of their knowledge of water use, water
24 management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee
25 must include but is not limited to representatives from affected:

26 (a) agriculture;

27 (b) conservation districts;

28 (c) departments of state government;

29 (d) environmental organizations;

30 (e) industries;

- (f) local governments;
- (g) reservation applicants;
- (h) utilities; and
- (i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

- (a) conservation district appointees shall initially serve for 4 years;
- (b) county commissioner appointees shall initially serve for 2 years; and
- (c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program ~~as provided in 85-2-439;~~

(c) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(d) provide a forum for all interests to communicate about water issues;

(e) provide education about water law and water management issues;

(f) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(h) assist in facilitating the resolution of water-related disputes;

(i) provide coordination with other basin management and planning efforts;

(j) advise government agencies about water management and permitting activities;

(k) consult with local governments within the Upper Clark Fork River basin; and

(l) report periodically to the legislature."

Section 3. Section 85-2-409, MCA, is amended to read:

"85-2-409. (Temporary) Temporary change validity -- limitations. All temporary changes authorized under 85-2-408 entered into prior to June 30, ~~2005~~ 2015, remain valid until the expiration date of the temporary change. A temporary change authorized under 85-2-408 may not be renewed or otherwise extended after June 30, ~~2005~~ 2015. (Terminates June 30, ~~2005~~ 2015 ~~sec. 6, Ch. 322, L. 1995~~ 2015.)"

Section 4. Section 85-2-440, MCA, is amended to read:

"85-2-440. Upper Clark Fork River basin change and lease validity -- limitations. All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, ~~2005~~ 2015, remain valid until the expiration date of the temporary change and lease. A temporary change or lease authorized under 85-2-439 may not be renewed or otherwise extended after June 30, ~~2005~~ 2015."

Section 5. Section 6, Chapter 322, Laws of 1995, is amended to read:

"Section 6. Termination.[Sections 1, 2, and 4] terminate June 30, ~~2005~~ 2015."

Section 6. Section 14, Chapter 487, Laws of 1995, is amended to read:

"Section 14. Termination. [Sections 4 through 8] terminate June 30, ~~2005~~ 2015."

Section 7. Section 3, Chapter 433, Laws of 2001, is amended to read:

"Section 3. Termination. [This act] terminates June 30, ~~2005~~ 2015."

Section 8. Section 3, Chapter 122, Laws of 2003, is amended to read:

"Section 3. Termination. [This act] terminates June 30, ~~2005~~ 2015."

NEW SECTION. **Section 9. Repealer.** Section 85-2-440, MCA, is repealed.

NEW SECTION. **Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

2 - END -